

# **United States v. Moussaoui: Preliminary Venire Instructions**

Hon. Leonie M. Brinkema  
Eastern District of Virginia  
February 6, 2006

The following text was prepared by the Eastern District of Virginia's United States District Judge Leonie M. Brinkema to address prospective jurors selected for the penalty phase of a capital prosecution for conspiracy with perpetrators of the September 11, 2001, attacks on New York and Washington, in *United States v. Moussaoui*, No. 1:01-cr-455 (E.D. Va. Dec. 11, 2001). The defendant pleaded guilty.

## **Opening Instructions to the Prospective Jurors**

Ladies and gentlemen, thank you for appearing this morning (afternoon). You have been summoned here to be considered for jury duty in the case of *United States of America v. Zacarias Moussaoui*, a/k/a "Shaqil," a/k/a "Abu Khalid al Sahrawi," who on April 22, 2005, pleaded guilty to three conspiracies at issue in this trial:

(1) conspiracy to commit acts of terrorism transcending national boundaries; (2) conspiracy to destroy aircraft; and (3) conspiracy to use weapons of mass destruction in connection with the September 11, 2001, attacks in New York and Northern Virginia and the hijacking of four aircraft and their crashes in New York, Pennsylvania, and Virginia. Each of these convictions exposes him to a possible sentence of death.

It will be the duty of the jury whose selection begins today to decide whether Mr. Moussaoui should be sentenced to death or be sentenced to life imprisonment without possibility of release. Based on Mr. Moussaoui's guilty pleas, there are no other sentences possible for those three conspiracies. Obviously, deciding whether to recommend a sentence of death is the most serious decision that a jury is ever called upon to make in a legal system. The gravity of this decision is reflected in the multi-step process set out in the Federal Death Penalty Statute.

Just because a person is guilty of a capital crime, that is a crime for which death is a possible penalty, does not mean that person should be sentenced to death. Instead, the jury must make specific factual findings about the defendant and what he specifically did in order to impose a death penalty. In this case, the first finding is whether the defendant's specific intentional conduct makes him death eligible. More precisely, the jury will be asked to decide whether the defendant intentionally participated in an act, which the government argues was his lying to agents after his arrest on August 16, 2001, which directly resulted in the deaths that occurred during the airplane hijackings and crashes on September 11, 2001.

If the jury were to find that Mr. Moussaoui did intentionally do such an act and that those deaths were a direct result of that act, the second phase of the trial would involve the presentation and consideration of evidence of aggravating and

mitigating factors and the question of whether Mr. Moussaoui should be sentenced either to life imprisonment without the possibility of release or death. Aggravating factors are facts about the defendant or the crime that the government believes favor the death penalty. Aggravating factors are of two types: statutory reasons, which are set forth in the death penalty statute, and non-statutory, other reasons, which are drafted by the government. Mitigating factors are facts about the circumstances of the crime or the defendant's role in it, or about his background or character, that the defense believes favor a sentence of life imprisonment without possibility of release.

In determining the appropriate punishment, each juror will have to consider the aggravating factors that had been proved beyond a reasonable doubt and any mitigating factors that the juror believes exist before making a determination as to the appropriate punishment. The jury itself does not actually impose the final sentence. That will be the Court's responsibility, but it must impose the sentence found appropriate by the jury.

This is only an overview of the law applicable to the jury's consideration of the death penalty. The jury will receive much more detailed instructions from the Court during the course of the proceedings.

Because this case will involve evidence about al-Qaeda and the September 11 attacks on the World Trade Center and the Pentagon, the case has received a great deal of publicity over the past few years. I assume every one of you is aware of what happened on September 11, has watched or read extensive media coverage about that day, and has watched news reports or read about al-Qaeda. And I expect many if not all of you have heard or read something about this case and the defendant. Such media exposure does not necessarily disqualify you from being eligible to serve on the jury, but it is obviously an issue we need to probe carefully. The problem with pretrial exposure to information about a defendant or issues in a case is simply this: Persons on trial must be judged not on the basis of what is in the news or popular media, but rather on the hard evidence presented in the courtroom during the trial.

If the pretrial publicity to which you have been exposed has caused you to form such strong opinions about the defendant or issues in the case that you think you might not be able to put those opinions aside entirely and listen to and evaluate the trial evidence with an open mind, then you must so advise the Court on the Jury Questionnaire that I will soon describe.

Similarly, the death penalty is a very controversial issue about which many Americans hold strong views. Simply having thought about or listened to or read about the death penalty will not disqualify you from being a juror in this case unless your views are so firmly set as to make it difficult for you to evaluate this case on the evidence presented during the trial and apply the law given to you by the Court, even if you disagree with that law.

To help the lawyers and the Court select a jury that can objectively listen to the evidence and decide the case solely on the basis of the evidence produced in this courtroom during the trial and within the law as the Court explains it, we have prepared a Jury Questionnaire, which you will be asked to fill out. Your totally candid answers to the questions in the questionnaire are essential to the government and Mr. Moussaoui's receiving a fair sentencing hearing. To ensure

that you feel comfortable answering these questions honestly, I have determined that your identities will not be revealed to any trial participant or to the public. In other words, you will be an anonymous juror. Only limited members of the court staff know your names. That is why you have been given a four-digit number as your identifier.

Although some of the questions may appear to be of a personal nature, please understand that the Court and the parties must learn enough information about each juror's background and experiences to select a fair and impartial jury. Your cooperation is of vital importance. Please answer each question as fully and completely as possible. Your complete candor and honesty is necessary so that both the prosecution and the defense will have a meaningful opportunity to select an impartial jury.

You must answer all the questions, to the best of your ability. If you do not know the answer to a question, write, "I don't know." If the question does not apply to you, write "N/A." If you do not understand a question, just write "don't understand." Do not ask court personnel to explain the question. They are not permitted to do that. **DO NOT LEAVE ANY QUESTION BLANK.** It is important that the answers be yours alone. If you need more space for your responses or wish to make further comments regarding any of your answers, please use the Explanation Sheet at the end of the questionnaire. Put the number of the question you are answering on the Explanation Sheet before you write the response or comment.

Please keep in mind that there are no "right" or "wrong" answers, only complete and incomplete answers. Complete answers are far more helpful than incomplete answers. Remember, *you are sworn to give true and complete answers to all questions.*

Unless the question states otherwise, the fact that a particular question is asked does not imply that the subject matter of the question is an issue in this case. As you read the questions, you are not to draw any inferences about the issues that must be decided in this case. Do not write on the back of any page. **PLEASE PRINT OR WRITE LEGIBLY, and be sure to put your juror number on the upper right corner on each page. When you have finished answering the Questionnaire, you must sign with your name. In that signature page you are affirming the accuracy of your answers. That page will be removed by court staff and will not be shown to any party.**

Part of the questionnaire includes a list of all persons who may be called as witnesses to testify. You must put your juror number on that witness list and return it to the court staff with your questionnaire. You may not disclose the name of any of those witnesses to anyone. The court personnel will advise you when you may leave once they have collected your questionnaire and the witness list from you.

After you complete the questionnaire, the next step will be for some of you to return to the courthouse for more specific individual questioning by the Court. The first of these individual questioning sessions begins Wednesday, February 15, 2006, so you are all free to go to work or otherwise keep your normal schedule until your next time to report. Individual questioning will continue daily until approximately 85 jurors are found eligible. To find out whether you have to re-

turn for individual questioning, and if so, when, you must call the jury information number given to you by the court's staff. If you are asked to return for individual questioning, you should expect to be at the courthouse for up to four hours. You will have to report either for a morning session starting at 9:30 a.m. or an afternoon session starting at 2:00 p.m. Immediately after the questioning session, you will be told whether you have been excused or need to return for the final round of jury selection, which is scheduled to start at 10:00 a.m. on Monday, March 6, 2006, in courtroom 700.

On March 6, 2006, 18 of you will ultimately be chosen to hear this case, although only 12 of you will actually deliberate and issue the final decision. The other 6 are alternates. We use alternates in long trials to be sure that if someone gets sick or for some other reason cannot continue as a juror we are sure to have the 12 jurors the law requires to make the decision at issue in this trial. No one is designated an alternate until just before deliberations begin.

If you are selected on March 6 to be one of the 18 jurors, you will need to remain at the courthouse all day, because we expect opening statements and some witness testimony to start Monday afternoon. Lunch will be provided for you, so do not worry about bringing food unless you have special food needs.

After March 6, the trial will be held from 9:30 a.m. to 5:30 p.m. Monday through Thursday. If we stay on schedule, we will not hold court on Fridays until the jury begins its deliberations. I will try to give you several days' notice if we plan to hold court on Fridays. Each phase of this trial is expected to last several weeks, which is why you were initially advised that the trial could go into late May. However, I will have a better time estimate for you after the trial begins. Obviously, we need jurors who can serve for the entire trial.

From today on, until you are notified that you have been excused from this case, you must avoid reading, listening to, or in any other respect being exposed to anything about this case, the attacks on September 11, or the death penalty. You may not investigate any of the facts related to this case, or view the court's website for this case. You are not to discuss or communicate about this case or any of the above issues with anyone. I have issued an Order that prohibits anyone, including members of the media and the general public, from trying to contact, interview, identify, or in anyway communicate with potential jurors. If you believe someone has tried to do so, call the Court immediately.

Lastly, the duty some of you will be asked to perform—to sit in judgment of another human being and decide whether he should live or die—is an awesome responsibility not to be taken lightly. You must have the moral integrity to follow the law, even if you disagree with it, and you must find the facts fairly, even if you do not personally like the conclusion to which they lead. You must be able to withstand any bias, prejudice, or sympathy for either side of this case, and any public opinion. You must agree that your only goal as a juror in this case is to reach a fair and just decision. That is what our legal system expects of its jurors, and that is what this Court expects from you.

Once again, thank you for appearing today. The Court will now stand in recess.